

House Bill 438

By: Representatives Thomas of the 100th, Drenner of the 86th, Buckner of the 130th, Benfield of the 85th, Gardner of the 57th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition and computation of income taxes, so as to provide certain income tax credits for business property and renewable energy property; to define terms; to provide for qualifying property and conditions under which the credits shall be allowed; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition and computation of income taxes, is amended by adding a new Code section to read as follows:

"48-7-29.13.

(a) As used in this Code section, the term:

(1) 'Business property' means tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for federal income tax purposes. The term does not include, however, a luxury passenger automobile taxable under Section 4001 of the Internal Revenue Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) 'Cost' means:

(A) In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under Section 1012 of the Internal Revenue Code, subject to the limitation on cost provided in Section 179 of the Internal Revenue Code; and

(B) In the case of property the taxpayer leases from another, cost is eight times the net annual rental rate which is the annual rental rate paid by the taxpayer less any annual rental rate received by the corporation from subrentals.

(3) 'Hydroelectric generator' means a machine that produces electricity by water power or by the friction of water or steam and is used at a facility which has not been recommended for removal by any federal or state agency and is certified by the Department of Natural Resources as meeting all pertinent state and federal requirements and governmental recommendations with respect to:

- (A) Waterflow;
- (B) Fish passage;
- (C) Water quality standards;
- (D) Watershed protection, mitigation, and enhancement;
- (E) Protection of threatened and endangered species;
- (F) Protection of cultural resources; and
- (G) Provision of recreational access.

(4) 'Renewable biomass resources' means:

- (A) Landfill gas;
- (B) Herbaceous agricultural waste and residue;
- (C) Digester gas or biogas from poultry waste not including poultry carcasses;
- (D) Sewage methane gas; and
- (E) Solid, liquid, and gaseous forms of all woody biomass, including mill residues but not including any of the following:
 - (i) Black liquor;
 - (ii) Wood that has been coated with paints, plastics, or formica; or
 - (iii) Wood that has been chemically treated for preservation.

(5) 'Renewable energy property' does not include equipment used for municipal solid waste incineration but otherwise includes any of the following:

- (A) Biomass equipment that uses best available control technology and uses renewable biomass resources for biofuel production of ethanol, methanol, biodiesel, or hydrogen; anaerobic biogas production of methane; or commercial thermal or electrical generation, as well as related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment;
- (B) Hydroelectric generators located at existing dams or in free flowing waterways, related devices for water supply and control, and equipment for converting, conditioning, and storing the electricity generated by such hydroelectric generators;
- (C) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat, as well as related devices necessary for

collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy; and

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power, as well as related devices for converting, conditioning, and storing the electricity produced by wind equipment.

(b)(1) If a taxpayer that has purchased or leased business property places it in service in this state during the taxable year, the taxpayer is allowed a credit equal to 4.5 percent of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is \$4,500.00. The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(2) If in one of the five years in which the installment of a credit accrues the business property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of the state, the credit expires and the taxpayer may not take any remaining installment of the credit.

(3) A taxpayer that claims the credit allowed under this subsection shall not be eligible to claim any other credit with respect to the same property. A taxpayer may not take the credit allowed in this subsection for business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes and will not claim the credit allowed in this subsection with respect to the property.

(c)(1) If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this state during the taxable year, the taxpayer is allowed a credit equal to 33 percent of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(2) If in one of the years in which the installment of a credit accrues the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of the state, the credit expires and the taxpayer may not take any remaining installment of the credit.

(3) No credit is allowed under this subsection to the extent the cost of the renewable energy property was provided by public funds.

(4) The credit allowed by this subsection may not exceed the following amounts:

(A) A ceiling of \$250,000.00 per installation applies to renewable energy property placed in service for any purpose other than residential; and

(B) The following ceilings apply to renewable energy property placed in service for residential purposes:

(i) \$1,400.00 per dwelling unit for solar energy equipment for domestic water heating;

(ii) \$3,500.00 per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating; and

(iii) \$10,500.00 per installation for any other renewable energy property for residential purposes.

(5) A taxpayer that claims the credit allowed under this subsection shall not be eligible to claim any other credit with respect to the same property. A taxpayer may not take the credit allowed in this subsection for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this subsection with respect to the property.

(d) A credit allowed in this Code section may not exceed 50 percent of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carry forwards, claimed by the taxpayer under this Code section for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

(d) To claim a credit allowed by this Code section, the taxpayer must provide any information required by the commissioner. Every taxpayer claiming a credit under this Code section must maintain and make available for inspection by the department any records the commissioner considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) The department shall provide an annual report of:

(1) The number of taxpayers that claimed the credits allowed in this Code section;

(2) The cost of business property and renewable energy property with respect to which credits were claimed; and

(3) The total amount of credits allowed."

SECTION 2.

1

2 This Act shall become effective on July 1, 2007, and shall apply with respect to taxable years
3 beginning on or after that date.

SECTION 3.

4

5 All laws and parts of laws in conflict with this Act are repealed.